

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2002 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VINOD GURALDAS CHAVLANI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YS LAKHANI for Petitioner

Mr.LR POOJARI, A.G.P. for Respondent No. 1, 2 & 4

MR SUNIL C PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/05/97

ORAL JUDGEMENT

1. The petitioner - Vinod Guraldas ChavlanI has brought under challenge the impugned detention order dated 11th February 1997 passed by respondent No.1, being the District Magistrate, under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'PBM Act')

in this petition under Article 226 of the Constitution of India.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate as under :

One Shri Dharmendra P. Solanki has been holding licence bearing No.262/81 and also the authorisation bearing No.139 for running a fair price shop situated at Vijaynagar, Harni Road, Vadodara City. The period of such licence is renewed upto 31.12.2000.

The statement of said Dharmendra Solanki was recorded by the Mamlatdar, Padra on 30.1.1997 and the partnership deed was also submitted. As per the Partnership deed the administration of the fair price shop was transferred in the name of the petitioner's father Guraldas. Said Shri Dharmendra Solanki has unauthorisedly transferred the administration of the fair price shop to the son of Guraldas (Vinodbhai Chavalani, petitioner herein).

The statement of the petitioner was recorded on 16.1.1997 and 18.1.1997 by the Mamlatdar, Padra. He has stated that he himself has been managing the affairs of the fair price shop. It is recited in the panchnama dated 18.1.1997 that the panchas have not seen Dharmendra P. Solanki in the shop at any point of time and the shop is being administered by the petitioner and this has been supported by the card holders.

In a surprise visit dated 16.1.97 at the aforesaid fair price shop it was found that the stock of 370 ltrs. of kerosene was received from M/s.K.G.Shah Kerosene Depot under Bill No.8300 which had not been taken on Stock Register. It would, therefore, appear that this stock of kerosene was not taken on stock Register for the purpose of disposing of the same in black market.

The cross checking of sale bills of kerosene for the month of December, 1996 made by the Mamlatdar, Padra and Deputy Mamlatdar (Supply) and the team of Supply Inspector by approaching each of the card holders revealed that the stock of 5515 ltrs. of kerosene was sold away in black market.

Though one Surti Babubhai Parsottambhai has been holding Card bearing No.828 of Shop No.213, Sale Bills No.375, 619, 1169 and 639 each of five ltrs. were

prepared in his name and thereby the stock of kerosene represented by such bills was disposed of unauthorisedly.

After verifying the stock Register for kerosene the stock of 55.5 ltrs. of kerosene was found less. After deducting permissible shortfall, the total shortfall was found to be 53.5 ltrs. The said stock of kerosene appears to have been disposed of in black market.

It has finally been asserted that the statements of 77 card holders revealed that a sum of Rs.15 was being charged from the card holder instead of Rs.12.75 ps. per five ltrs. of kerosene and thus extra amount of Rs.2.25 ps. was being charged per five ltrs. of kerosene.

It has been alleged that in this fashion the petitioner has been committing the breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, and that the petitioner having committed breach of the said order was required to be preventively detained under the aforesaid provision of PBM Act, else the petitioner might continue his illegal activity.

3. The petitioner has challenged the impugned order of detention as also his continued detention under the said order on number of grounds, inter-alia, on the ground of delay in considering and deciding the petitioner's representation on the part of the Central Government. The ground reads as under :

"The petitioner respectfully submits that representation made by the present petitioner to the authorities competent to decide the same have not yet decided the representation of the petitioner and if at all any such authorities have decided the same then there is a considerable delay in deciding such representation of the petitioner. There is also a delay in communication of the decision by such authorities if at all the representation is decided by them and therefore, the impugned order of detention is liable to be quashed and set aside."

4. The State Government has replied the petition by asserting that the representation dated 18th February 1997 made by the detenu was forwarded by the Jail Authority vide letter dated 18.2.1997 and received by the special Branch of Food and Supplies Department on 21.2.1997. The file was put up by the Special Branch on

21.2.1997 to the Under Secretary, who cleared it on the same day and placed it before the Deputy Secretary also on the same day and the Deputy Secretary cleared it on the same day. The file was then submitted to the Secretary on 21.2.1997, i.e. on same day, and it was cleared on 24.2.1997 as 22.2.1997 and 23.2.1997 were holidays. The file then went to the concerned Minister on 24.2.1997 and it was cleared on 25.2.1997. The decision of the rejection was communicated to the detenu by letter dated 25.2.1997. It is thus the stand of the State Government that no delay has been caused in deciding the petitioner's representation by the State Government. However, it is not in dispute that no copy of representation dated 18.2.1997 was transmitted to the Central Government. It is also not in dispute that the petitioner had sent one representation as per the representation dated 18.2.1997 on 25.2.1997 for the same to be transmitted to the Central Government. The Jail Authority has placed on record the copy of message dated 8.5.1997 indicating therein that the said representation was sent to the Central Government by Registered Post A.D. on 28.2.1997. However, the Central Government has replied to the aforesaid challenge against the continued detention in following manner :

"that the contents of paras : 4(ff) of the petition concern the Union of India.....". "As regards the contention made in Para : 4(ff) it is pointed out that no such representation has been received so far by respondent No.3."

Such Affidavit has been filed by the Under Secretary in the Ministry of Civil Supplies, Consumer Affairs and Public Administration, Shastri Bhavan, New Delhi on 15.4.1997.

5. It is thus submitted that none of the authorities on the part of the State Government have taken care to verify the acknowledgment receipt and to send another copy of representation within the reasonable time if the acknowledgement receipt was not received from the Central Government. The Central Government has not stated anything about the representation having been received after the date of the Affidavit noted hereinabove. Be that it may, the petitioner's representation has remained unconsidered by the Central Government for a period of more than two months and such delay remains unexplained. Mr.Sunil C. Patel, however, placed reliance upon a Bench decision of this Court in the case of Bharatkumar Ishwarbhai Patel V/s.District Magistrate Bharuch, reported in 1989 (2) G.L.H.312. There the facts would

indicate that the representation was received on 15.3.1988 and parawise comments from the State Government were called for on 16.3.1988 (immediately on the next day). Thus in the background of passage of one day the submission appears to have been that the delay of one day was not explained. In that light the Bench had an occasion to make following observations :

"While examining the question with regard

to delay in considering the representation by the appropriate authority one has to be pragmatic and one must have an eye on the realities of life. When it is stated that every day's delay should be explained this is required to be understood in pragmatic manner. Otherwise one may ask why not explain the delay of every hour and why not explain the delay minute by minute. All that is required to be seen is as to whether the authority had shown due promptness. Even while judging due promptness on the part of the authority concerned, the fact that the authority is working in the system where to work in tardy and prolonged fashion has become the rule of life."

In my opinion the aforesaid decision would not be applicable to the facts with regard to delay noted hereinabove. Here there is unexplained delay in respect of communication and/or receipt of the representation and consequent non-consideration thereof by the Central Government. Reference in this connection may be made to a decision in the case of Harish Pahwa V/s. State of U.P., reported in AIR 1981 SC 1126 and Aslam Ahmed Zahire Ahmed Shaik v/s. Union of India, reported in AIR 1989 SC 1403. Thus, the avoidable and unexplained delay has clearly resulted in rendering the continued detention of the petitioner illegal and constitutionally impermissible.

5. As the petitioner succeeds on the aforesaid ground of delay in considering the representation by the Central Government, it would not be necessary to deal with the other grounds of challenge levelled against the impugned order of detention.

In the result, this petition is allowed. The continued detention of the petitioner - Vinod Guraldas Chavhani, under the impugned order of detention is directed to be put an end to and the petitioner shall be released immediately, if he is not required to be detained in any other case. Rule made absolute in the aforesaid terms.

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